

This chapter is used for non-NHS routes by local agencies operating under Certification Acceptance and choosing to administer construction contracts themselves. In the sequence of project development, this follows Chapter 17, Advertising and Award Procedures.

Local agencies whose construction contracts are administered by the Montana Department of Transportation (MDT) should refer to Chapter 18, MDT Administered Projects.

The following chart illustrates the contract administration and oversight responsibilities for the Federal Highway Administration (FHWA) (F), MDT (S), and local agencies (L):

<u>Action</u>	<u>Local CA non-NHS</u>
a. Construction Fund Auth.	F
b. Changes/Extra Work/ Nonparticipation	S/L
c. Claims	S/L
d. Project Inspections	L
e. Final Inspection	S
f. Final Acceptance	S

19.1 General Discussion

MDT is responsible for the proper expenditure of FHWA funds on local agency projects. Highways and local programs will consult and work with local agencies as needed and will perform systematic project management reviews to ensure that proper procedures are followed.

The local agency will have the flexibility to administer the construction, material testing, and inspection in accordance with the MPWSS, or *MDT Road and Bridge Standard Specifications* or combination of the two. The local agency will determine appropriate standard specifications during the Project Development phase. In the case of conflicting specifications, the local agency will decide what is best for the project and then make this clarification in Special Provisions and/or Contract Plan documents. (The *MDT Construction Manual* is a reference guide for the local agency to refer to.) For exceptions, see Section 19.32. In case of conflicting guidelines, this chapter governs the *Construction Manual*. FHWA projects are subject to EEO, Labor (Federal), and DBE compliance reviews by MDT. Refer to the *CTEP Manual for Enhancement Projects*.

Appendix 19.95 illustrates the major timeline for construction contracts and provides more details for specification references.

19.2 Preconstruction Conference

After a contract is awarded, the local agency should arrange a conference with the contractor. The local agency engineer shall notify the MDT District Administrator of the time and place of the conference. The District Administrator will notify appropriate MDT internal parties. A preconstruction conference should be held before construction. It may be desirable to hold separate conferences for some specialized construction items such as paving, roadside planting, or electrical work. The preconstruction conference may include a partnering session if appropriate. For a sample conference agenda, refer to Appendix 19.91.

The meeting should be documented and copies of the minutes transmitted to the District Administrator and each agency, organization, and firm that has involvement or interest in the project.

19.3 Quality Control

The quality of materials and workmanship on a project must conform to the contract specifications so that the public funds expended will have purchased a safe, economical, and fully functional transportation facility.

.31 General

The source for each type of material must be approved by the local agency.

Upon request, the District Administrator will provide information regarding material sources (gravel pits, mix designs) and instruct the local agency of the updating process. MDT may provide materials testing at the request of the local agency.

Reimbursement of FHWA funds may be denied for work done contrary to or in disregard of the contract documents.

.32 Exceptions to the *MDT Construction Manual*

The following exceptions to the *MDT Construction Manual* may be used by the local agency, in developing a plan for construction oversight. The agency may submit their plan through the District Construction Engineer (DCE) for review and comment. If these methods are not utilized, the *MDT Construction Manual* shall prevail.

The following procedures are approved exceptions to the *Construction Manual* requirements:

- The local agency may develop their own Record of Materials, and approve manufacturers not listed on the approved MDT manufacturers list.
- Asphalt plant inspectors and scale persons are not required at established commercial sources. This exception does not allow the agency to eliminate acceptance sampling of the materials.
- Local agencies have the option of independent assurance sampling.
- The following items may be accepted with an approved catalogue cut and documented by visual inspection or a manufacturer's material certification (provided manufacturer's certification is based on actual testing):
 - Electrical items
 - Paving or geotextile fabrics
 - Fencing of any kind
 - Landscaping or irrigation items
 - Glare screens
 - Traffic buttons or paints
 - Guardrail items
 - Drainage items
- Minor quantities may be increased to 500 tons (450 tonnes) for all aggregate items, treated or untreated, from an established commercial source.
- Local agencies may test their own signal cabinets.

- Local agencies may lower the density testing requirements to 90 percent of the rice density for nonstructural overlay pavement designs with a thickness of 1.25 to 2 inches (30 to 50 mm). This should be limited to areas or projects with documented foundation problems and on overlay of existing pavements.
- On non-NHS that does not contain federal funding, the local agency is required to follow the qualified testing program outlined in the *MDT Construction Manual*.
- Projects on non-NHS that do not contain federal funding are required to take acceptance samples utilizing the testing methods outlined in the *MDT Construction Manual*.

19.4 Progress Payments

Progress payments must be based on measurements of work performed so that the contractor can be fairly compensated and so that public funds will not be expended on work that has not been done.

Progress estimates should be prepared on a preselected date each month. The local agency shall document the quantities paid each month on a form preapproved by the state. Progress estimates should be prepared per preapproved process.

19.5 Changes and Extra Work

Prior to beginning work, an agency should have a written policy for the approval of change orders to ensure that approval, either verbal or written, is given and documented.

It is important to distinguish between actual changes to the contract work and normal overruns and under runs that may occur. Whenever a change in the contract is required, the agency shall prepare a change order. The change order shall include an explanation in sufficient detail so that everyone involved will understand the need for the change. The explanation shall include a detailed justification of the cost associated with the change. All change orders must be numbered in sequence.

To be eligible for FHWA participation, all change orders must be approved by the local agency. No change order work shall be done prior to approval. In the case of emergency situations, (see *Standard Specifications* and *Construction Manual* for definition) verbal approval may suffice. Verbal approval must be followed by submission of the corresponding change order within ten calendar days.

When changes in the work will alter the termini, character, and scope of an approved project, the local agency must notify the District Administrator prior to the commencement of the physical work. A new environmental document may be required.

.51 Administrative Settlement Costs

Administrative settlement costs are costs related to the defense and settlement of contract claims including, but not limited to, salaries of contracting officers or their authorized representatives, attorneys or members of arbitration boards, appeal boards, etc., which are allowable to the findings and determination of contract claims, but not including administrative or overhead costs.

FHWA funds may participate in administrative settlement costs which are:

- Incurred after notice of claim.
- Properly supported.
- Directly allocable to a specific FHWA project.

- For employment of special counsel for review and defense of contract claims when recommended by the agency's legal counsel and approved in advance by MDT.

When a claim is submitted, the District Administrator should be contacted for advice on how to proceed.

19.6 Termination of Contract

Follow claims procedures contained within standard specifications.

19.7 Compliance With Federal Contract Provisions – confer with MDT Civil Rights Bureau

FHWA requires that all subcontracts be in writing, per 23 CFR, Section 635.116(b). This includes contracts between the prime contractor and their subcontractors.

Each of these subcontracts also must physically contain the following documents, none of these documents can be included by reference only.

- The general special provision (GSP) entitled "Required Federal Aid Provisions,"
- Form FHWA 1273 "Required Contract Provisions Federal Aid Construction Contracts," and
- The prevailing wage rates for the contract.

It is the responsibility of the local agency to ensure full compliance with the provisions above.

Implementation of the DBE, Labor (Davis Bacon) and EEO programs are also federal contract requirements. Refer to Chapter 11 for Disadvantaged Business Enterprises and Equal Employment Opportunity and Training.

19.8 Physical Completion of Construction

The local agency will carry out the following requirements to terminate the construction contract and ready the project for acceptance by MDT and FHWA:

.81 Notice of Physical Completion.

MDT, CBIG Procedures and State law define

.82 Final Inspection

The local agency project engineer shall send a request for MDT inspection and acceptance to the District Administrator within 15 days of physical completion of work by the contractor. A copy of the physical completion letter that was sent to the contractor should accompany the request.

.83 Final Reports

A construction project is considered complete when the items listed below have been completed. All certifications and reports shall be retained for at least three years after final acceptance of the project.

- a. Final Estimate. When the contractor has a claim pending against the local agency and wants to receive a final estimate, a claim must be submitted by letter detailing specific items and amounts. (When a claim is submitted, immediately contact the District Administrator so FHWA can be informed of the claim's details at an early stage. See Section 1-09.12(2) of the MDT/APWA *Standard Specifications*.)

- b. Comparison of Preliminary and Final Quantities. A listing of items showing the preliminary and final quantities.
- c. Certified Final Bill for Utility Agreement, if applicable, to District Administrator
- d. Final Records . The local agency project engineer must document the work performed on the contract. Documentation consists of field books, inspector's record of field tests, Project Engineer's and inspector's diaries, all invoices, weigh bills, truck measurements, quantity tickets, receiving reports, field office ledgers, cross-sections, computer listings, and work profiles. Photographs or videotapes before, during, and after construction could be useful, especially if care is taken to show any unusual conditions, equipment, or procedures. Final records shall be retained by the local agency for at least three years following acceptance of the project by MDT. The local agency will receive from the District Administrator a letter showing the starting and ending date of the three-year retention period (OMB Circular A-128).
- e. Record of Material Samples and Tests.
- f. Materials Certification . The intent of the materials certification is to assure that the quality of all materials incorporated into the project is in conformance with the plans and specifications and thus ensures a service life equivalent to the design life. Completion and final contingent upon materials and labor certifications. This materials certification shall be completed in accordance with of the *Construction Manual* and is submitted along with the completion letter to the District Administrator.
- g. Affidavit of Wages Paid. Upon completion of a contract, the prime contractor and every subcontractor or agent shall submit Form LI-700-7, Affidavit of Wages Paid," to DOL for certification of the wage rates paid on the project. Each affidavit must be accompanied by the filing fee established by DOL.

.84 Project Acceptance

The District Administrator's approval of the final estimate will be considered as the local agency's acceptance of the project.

19.9 Appendixes

19.91 Sample Preconstruction Conference Agenda

19.92 Sample Preconstruction Conference Minutes

19.93 Sample Letter Requesting MDT Project Inspection and Acceptance

19.94 Sample Materials Certification

19.95 Timeline for Construction Contracts

19.96 Weekly Statement of Working Days

19.97 Change Order

19.98 FHWA Form WH-347

Appendix 19.91**Sample Preconstruction Conference Agenda**

- I. ORDER OF WORK (Progress Schedule)
- II. UTILITIES AND RAILROADS
 - A. Project Engineer prepare list of affected services and representative to be contacted.
 - B. Underground services should be located.
 - C. Notification time required by organizations.
 - D. Insurance required, if any.
- III. SUBCONTRACTORS AND AGENTS
 - A. Request for approval must be submitted along with a Statement of Intent to Pay Prevailing Wage and Subcontractor or Agent Certification.
 - B. Nature of work to be performed by each.
 - C. Subcontractor's route correspondence via prime contractor.
 - D. Prime contractor must have a representative with authority on the job at all times (designated by letter).
 - E. DBE subcontract work in-depth discussion including conditions of award if any.
- IV. RECORDS AND REPORTS
 - A. Description of required forms and initial supply should be handed out or mailed to prime contractor.
 - B. All reports must be handled through prime contractor's office.
 - C. Request for approval of sources of material should be submitted as soon as possible.
 - D. Falsework plans, if required.
 - E. Certified payrolls must be submitted on time and wage rate interviews will be conducted.
 - F. EEO and trainee requirements –in-depth discussion.
 - G. DBE requirements when the contract contains DBE goals in-depth discussion.
 - H. Required job site posters (provided to Prime Contractor).
 - I. Davis-Bacon statement regarding the USDOL, MDT and local agency's role in investigations for labor compliance.
 - J. ADA requirements.
- V. TRAFFIC CONTROL AND SAFETY
 - A. *Manual On Uniform Traffic Control Devices* will control signing.
 - B. Review and discussion of Traffic Control Plan (TCP).

- C. Safety control on structures.
- D. Flagman should use standard paddle and vest and must be certified with flagman card.
- E. Speed regulation of construction equipment.
- F. Contractor and project engineer designate by name the individual responsible for construction traffic control.
- G. Safety and health requirements.
- H. Request police to report all construction zone accidents to the contracting authority.
- I. Gross legal load limits shall be adhered to.

VI. ENVIRONMENTAL CONSIDERATIONS

- A. Commitment tiles.
- B. Standard Specifications/Special Provisions.
- C. Contractor responsibility to obtain permits.
- D. Department of Ecology requires registration of rock crushers in accordance with WAC 173-400.

VII. DISMISS DISINTERESTED PARTIES (list those leaving)

VIII. REOPEN WITH GENERAL CONSTRUCTION DISCUSSION

- A. Contractor explains how he plans to pursue the work.
- B. Review of anticipated construction problems.
- C. Conflict resolution –need for partnering.

Appendix 19.92 Sample Preconstruction Conference Minutes

To: (Contractor)

Agency _____
Project Title _____
F.A. _____
Contract No. _____

Date:

Attention: (Contractor's Representative)

1. Time:
Location of meeting:
2. Persons attending and organizations represented:
3. Description of work:
4. Discussion items:

Prepared by:_____

cc: MDT_____,
Each agency, organization, and

firm who has involvement or interest in the project.

Appendix 19.93 Sample Letter Requesting MDT Project Inspection and Acceptance

Date

LOCAL AGENCY LETTERHEAD

District Administrator
Department of Transportation

Dear Sir:

Contract No.
Contract Name
Federal Aid No.

For your information, I am sending you a copy of the contract completion letter that was sent to the contractor. I request inspection and acceptance of the project by MDT.

Very truly yours,

(Director of Public Works)
(County Engineer)
(City Engineer)
(Local Agency Engineer)

Appendix 19.94 Sample Materials Certification

Project _____ Contract No. _____

Checklist for Project Certification

Yes No

1. ____ ____ Request for approval of material sources was submitted for all items listed on the record of materials and as required by Chapter 9-4 of the MDT *Construction Manual* or alternative procedures authorized by LAG
2. ____ ____ All preliminary samples requested by or for approval of source were submitted and approved or an alternate approval material or product was used.
3. ____ ____ All samples and documentation including manufacturer's certificate of compliance, shop drawings, mill test certificates, etc., as required by the record of materials were submitted and subsequently approved.
4. ____ ____ If job quantities differed by more than 10 percent from those listed on the record of materials, acceptance samples were taken at the frequency listed in the *Construction Manual* or alternative procedures authorized by LAG.
5. ____ ____ All items requiring inspection at the point of fabrication were so inspected and were accepted at the jobsite by the presence of an approved stamp, sticker, tag, or mark.
6. ____ ____ The results of the tests on acceptance samples indicate that the materials incorporated in the construction work, and the construction operations controlled by sampling and testing, were in conformity with the approved plans and specifications. Exceptions to the plans and specifications are explained on the back hereof (or on attached sheet).
7. ____ ____ Items added by change order and not listed on the record of materials were accepted in accordance with procedures listed in the *Construction Manual* or alternative procedures authorized by LAG

Note: Any "No" answers on this checklist must be fully explained and documented. Attach test reports representing nonspecification material as well as an explanation of the circumstances leading to acceptance of said material. All seven items must be completed before the project can be certified.

Certified
Signature _____ Date _____ (Approving Authority)

Appendix 19.95 Timeline for Construction Contracts

_____	•	Award Date 1-03 MDT	
_____	•	Execution (MDT), Notice to Proceed	
_____	•	Begin Work 1-08.4 MDT	
Working or Calendar Days set by Contract			
_____	•	Substantial Completion	1-08.9 MDT
_____	•	Physical Completion	1-08.5 MDT
_____	•	Contract Completion	MDT
_____	•	Completion Date/Final Acceptance	1-08.5 MDT
See Prompt Pay Section 1-09.9			
_____	•	Final Payment	
_____	•	<u>Retainage Release- Per MCA 28-2, 18-2</u>	

Appendix 19.96 Weekly Statement of Working Days

Contractor					
Address (Street, City, State, ZIP Code)					
Contract No.	Federal Aid Project No.	Highway No. or County	Statement No.	Date	
THE FOLLOWING STATEMENT SHOWS THE NUMBER OF WORKING DAYS CHARGED TO YOUR CONTRACT FOR THE WEEK ENDING:					
DATE	DAY	WEATHER CONDITION	UNWORKABLE DAYS	UNWORKABLE DAYS	REASON FOR UNWORKABLE DAYS
	Sunday				
	Monday				
	Tuesday				
	Wednesday				
	Thursday				
	Friday				
	Saturday				
Days This Week					NOTE: ROUND ALL TIME TO THE NEAREST ½ DAY
Days Previously Reported					
Total Days to Date					
CURRENT STATUS					
WORKING DAYS SPECIFIED IN CONTRACT					
APPROVED EXTENSION OF TIME					
TOTAL AUTHORIZED TIME OF CONTRACT					
LESS WORKABLE DAYS CHARGED					
WORKING DAYS REMAINING					
SUMMARY OF WEEK'S ACTIVITIES					
				PROJECT ENGINEER	
NOTE: The contractor will be allowed 10 days from date of this report in which to protest in writing the correctness of this statement, otherwise it shall be deemed to have been accepted as correct.					

Appendix 19.97 Change Order

State of Montana
 Department of Transportation
 Highways Division
CHANGE ORDER

Change Order No.:

Project No:

Designation:

Date: _____

To:

You are hereby directed to perform the following work, constituting changes in the approved contract. The Highways Division will not be liable for any work not provided for in the contract and performed prior to the approval thereof.

Work Description

The payment shall be in full compensation for furnishing all labor, tools, equipment, materials and incidentals necessary to complete the work.

Estimate and Cost

Note: The quantities shown are not guaranteed. Payment will be based on actual quantities.

County:

Type Code:

Item No.	Split	Quantity	Unit	Unit Description	Unit Price	Amount
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Time extension days

Total Cost

\$

I hereby understand and agree to the terms
 And conditions set forth in this instrument.

Prepared by _____
 Field Project Manager

Recommended by _____
 District Construction Engineer Date

By _____
 Contractor or Firm Date

Approved by _____
 District Engineer Date

Title _____

Approved by _____
 Construction Bureau Date

Transmitted to FHWA – Date:

Approved by FHWA – Date:

Appendix 19.98 FHWA Form WH-347

Date _____

I, _____
 (Name of signatory party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by _____

_____ on the _____

(Building or work)

_____ ; that during the payroll period commencing on the _____

day of _____, _____ and ending the _____ day of _____, _____

all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

_____ from the full
 weekly wages earned by any person and that no deduction s have been made either directly or indirectly from the full wages earned by any person, other than permissible deduction s as defined in Regulations, Part 3 (29CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat.357; 40 U.S.C. 276c), and described below:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set for the therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor,

(4) That;

a. WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS,
 FUNDS, OR PROGRAMS

☐ - In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as no Section 4(c) below.

b. WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ - Each laborer or mechanic listed in the above referenced payroll has been paid as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below.

c. EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION
REMARKS	
NAME AND TITLE	SIGNATURE
THE WILFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.	